

U. S. DISTRICT COURT
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RECEIVED

CURVES INTERNATIONAL, INC.,)	2007 DEC 21 P 4:39
)	DEBRA P. HACKETT, CLK
Plaintiff,)	U.S. DISTRICT COURT
)	MIDDLE DISTRICT ALA
v.)	CASE NO. 2007-CV-807-MHT
)	JURY TRIAL REQUESTED
LINDA S. MOSBARGER,)	
)	
Defendant.)	

MOTION TO RE-CONSIDER

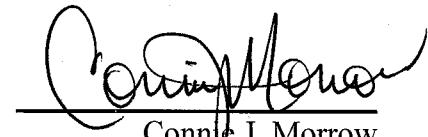
COMES NOW the DEFENDANT, LINDA S.MOSBARGER, nee LINDA S. LEWIS, comes through undersigned counsel and requests this Honorable Court to Re-consider the findings of the Court in the Opinion dated December 5, 2007, on the following issues :

1. The ownership of a competitive business, Mike's Gym (aka Jordan's Gym aka The Jordan Community Center), in 1997 prior to becoming a franchisee of Curves in May of 1999; and,
2. The identity of the instructor at the Jordan's Gym (aka The Jordan Community Center) when the representative of Curves visited for a short time on or about August 27, 2007.

Based upon the affidavits listed below filed here with, which are respectively brought to the Court's attention based upon evidence which came to be known following the lengthy hearing the parties had on November 21, 2007, the Wednesday before Thanksgiving, when the following were either unknown or unavailable:

1. Affidavit of the first landlord of Mike's Gym, ROBERT GOLDEN;
2. Affidavit of the additional landlord of Mike's Gym, ELAINE GOLDEN;
3. Affidavit of instructor of the class at Jordan's Gym on August 27, 2007, at 6 p.m., MARILYN FISHER; and,
4. Affidavit of person at class Curves Representative spoke with on August 27, 2007, BILL FARSHEE.

Respectfully submitted,



Connie J. Morrow
(#ASB-6870-O78C)
Attorney for LINDA S. LEWIS

OF COUNSEL:

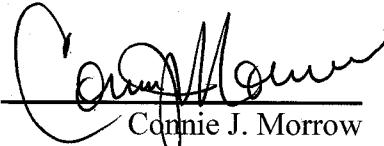
Grainger Legal Services, LLC
4220 Carmichael Court, N.
Montgomery, Alabama 36106
Tel. (334) 260-0500
Fax (334) 260-5580
E-mail cgrainger@graingerlegal.com

CERTIFICATE OF SERVICE

The undersigned verifies a true and accurate copy of this document has been delivered to the following (Defendants and purported legal counsel) by placing on this date a copy of such in the U. S. mail, proper postage prepaid, on this the 21st day of December, 2007, and addressed as follows:

Joseph W. Carlisle
William D. Jones, III
JOHNSTON, BARTON, PROCTOR & ROSE, LLP
Colonial Brookwood Center
569 Brookwood Village, Suite 901
Birmingham, AL 35209

Jason J. Stover
Micheal R. Gray
GRAY, PLANT, MOOTY, MOOTY & BENNETT, PA
500 IDS Center, 80 South Eighth Street
Minneapolis, MN 55402


Connie J. Morrow
Connie J. Morrow
(#ASB-6870-O78C)
Attorney for LINDA S. LEWIS

AFFIDAVIT

State of **ALABAMA**

County of **ELMORE**

Personally came and appeared before me, the undersigned Notary, the within named **Robert Golden** who is a resident of **ELMORE** County, State of **ALABAMA**, and makes his statement and Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of his knowledge.

STATEMENT:

My name is Robert Golden. I reside at 260 Coosada Lane, Coosada, AL 36020. On April 1, 1997, I leased some property that belonged to me (97 Lightwood Road, Deatsville, AL in Holtville/Slapout, AL) to Michael Mosbarger and Linda Mosbarger for a period of 5 years. At the end of the lease, I gave Michael and Linda Mosbarger an option to extend the lease for one year. Michael and Linda's purpose was to open an exercise facility named Mike's Gym. For the first 6 months, Mike's Gym was all male and 6 months later became co-ed. Mike's Gym was located adjacent to my business; Lake Pharmacy, located right next door at 95 Lightwood Road, Deatsville, AL 36022 in Holtville/Slapout, AL 36022. With the women feeling somewhat uncomfortable working out with males, Ms. Mosbarger began talking about adding an all women's facility named Curves For Women. In May of 1999, Ms. Mosbarger opened Curves which was located in the same building with Mike's Gym, however, a wall separated the two and each gym had its own entrance with Mike's Gym located in the backend of the building. At the end of the five-year lease, the Mosbargers relocated both gyms (Mike's Gym and Curves for Women) across the street about 500 feet to 10009 Holtville Road, Deatsville, AL in Holtville/Slapout. The Mosbargers' landlord there was Mr. Denson Holley, a local Elmore County resident.

Done this the 28th day of November 2007.



Robert Golden

Notary Certification

I, Jereda A. Horn the undersigned authority, a Notary Public in and for said State at Large, hereby certify that ROBERT GOLDEN whose name is signed in the foregoing, and who is known to me, acknowledged before me on this day, that being informed of the contents and being of sound mind verified the truth and veracity of the forgoing and voluntarily executed this document after being duly sworn.

Given under my hand and seal this the 28th day of November 2007.

Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
July 17, 2011

AFFIDAVIT

State of ALABAMA

County of ELMORE

Personally came and appeared before me, the undersigned Notary, the within named **Elaine Golden** who is a resident of ELMORE County, State of ALABAMA, and makes her statement and Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge.

STATEMENT:

My name is Elaine Golden. I reside at 260 Coosada Lane, Coosada, AL 36020. On April 1, 1997, I leased some property that belonged to me (97 Lightwood Road, Deatsville, AL in Holtville/Slapout, AL) to Michael Mosbarger and Linda Mosbarger for a period of 5 years. At the end of the lease, I gave Michael and Linda Mosbarger an option to extend the lease for one year. Michael and Linda's purpose was to open an exercise facility named Mike's Gym. For the first 6 months, Mike's Gym was all male and 6 months later became co-ed. Mike's Gym was located adjacent to my business; Lake Pharmacy, located right next door at 95 Lightwood Road, Deatsville, AL 36022 in Holtville/Slapout, AL 36022. With the women feeling somewhat uncomfortable working out with males, Ms. Mosbarger began talking about adding an all women's facility named Curves For Women. In May of 1999, Ms. Mosbarger opened Curves which was located in the same building with Mike's Gym, however, a wall separated the two and each gym had its own entrance with Mike's Gym located in the backend of the building. At the end of the five-year lease, the Mosbargers relocated both gyms (Mike's Gym and Curves for Women) across the street about 500 feet to 10009 Holtville Road, Deatsville, AL in Holtville/Slapout. The Mosbargers' landlord there was Mr. Denson Holley, a local Elmore County resident.

Done this the 28th day of November 2007.



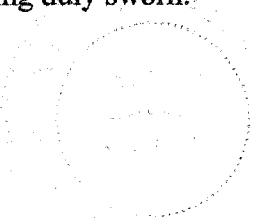
Elaine Golden

Notary Certification

TERESA A. HORN the undersigned authority, a Notary Public in and for said State at Large, hereby certify that ELAINE GOLDEN whose name is signed in the foregoing, and who is known to me, acknowledged before me on this day, that being informed of the contents and being of sound mind verified the truth and veracity of the forgoing and voluntarily executed this document after being duly sworn.

Given under my hand and seal this the 28th day of November 2007.

TERESA A. HORN
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
July 17, 2011



AFFIDAVIT

State of **ALABAMA**

County of **ELMORE**

Personally came and appeared before me, the undersigned Notary, the within named **Marilyn Fisher** who is a resident of **ELMORE** County, State of **ALABAMA**, and makes her statement and Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge.

STATEMENT:

My name is Marilyn Fisher. I reside at 338 County Road 70, Deatsville, AL 36022. I teach aerobic classes at the Jordan's Community Center located at 770 Shields Road, however, I do not get paid. I taught an aerobics class on August 27, 2007 beginning at 5:50 p.m. and ending at 6:50 p.m. at the Jordan's Community Center. I do not remember seeing Julie Ferrel come into the Jordan's Community Center on the evening of August 27, 2007.

I understand that Julie Ferrel said she saw Linda Lewis teaching an aerobics class on the night of August 27, 2007. A number of people have mistaken me for Linda Lewis because we do resemble each other. We both have blonde hair and have the same type of built. However, I have never seen Linda Lewis teach an aerobics class or any other class in the Jordan's Community Center.

Dated this the 28th day of November 2007.

Signature: Marilyn Fisher
Marilyn Fisher

I Teresa A. Horn, the undersigned authority, a Notary Public in and for said State at Large, hereby certify that MARILYN FISHER, whose name is signed in the foregoing, and who is known to me, acknowledged before me on this day, that being informed of the contents and being of sound mind verified the truth and veracity of the foregoing and voluntarily executed this document after being duly sworn.

Given under my hand and seal this 28th day of November, 2007

TERESA A. HORN
Notary Public, State of Alabama
Alabama State At Large
My Commission Expires
July 17, 2011

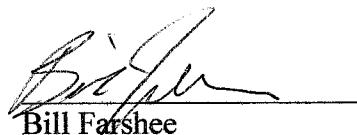
AFFIDAVITSTATE of ALABAMACounty of ELMORE

Personally came and appeared before me, the undersigned Notary, the within named Bill Farshee who is a resident of ELMORE County, State of ALABAMA, and makes his statement and Affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things are set forth are true and correct to the best of his knowledge.

STATEMENT:

My name is Bill Farshee. I reside at 120 Huckleberry Drive, Deatsville, AL 36022. I was attending a "step class" at Jordan's Community Center on Monday evening August 27th, 2007. Marilyn Fisher was leading the step class. Around 6:05 p.m., a young women came in after we had already started class. She was blonde and roughly 5 feet tall. I'm normally in the back row near the entrance of the Community Center and I am sometimes the first person to greet people or let people in that are either late for class or have inquiries about Jordan's Community Center. Ms. Tenley, the manager, was not available at that time. Recently, we've had to lock the doors to the Community Center while taking classes because of strange activities (peeping toms) going on. I immediately went over to her and told her that the class would not be over for a while and that I could take her name and number and have the owner of the Community Center to call her later. She replied that she was interested in a gift certificate for her mom. She also said that she would be in town for a short time and would come back another time. She left and I resumed my workout. The couple of minutes she was in the Jordan's Community Center, I observed no camera or anything else that she was holding in her hands. She did not leave her name or number.

Done this the 28th day of November 2007



Bill Farshee
NOTARY CERTIFICATION

I, Kenneth F. Holt the undersigned authority, a Notary Public in and for said State at Large, hereby certify that Bill Farshee whose name is signed in the foregoing, and who is known to me, acknowledged before me on this day, that being informed of the contents and being of sound mind verified the truth and veracity of the forgoing and voluntarily executed this document after being duly sworn.

Given under my hand and seal this the 28th day of November 2007.

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Jan 25, 2011
BONDED THRU NOTARY PUBLIC UNDERWRITERS

